

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 John Tony Whitesell,

7 Plaintiff,

8 v.

9 Serenity Healthcare, Inc.,

10 Defendant.

Case No. 2:24-cv-00662-CDS-DJA

Order

11 Before the Court is pro se Plaintiff John Tony Whitesell's motion for appointment of
12 counsel (ECF No. 23) and motion requesting case status (ECF No. 25). This matter is also before
13 the Court on the return of Plaintiff's mail.

14 **I. Motion for appointment of counsel.**

15 In his motion for appointment of counsel, Plaintiff asks for the Court to appoint him
16 counsel because he is "no legal expert" and "due to [his] state of poverty." Courts have authority
17 to request that an attorney represent any person unable to afford counsel. 28 U.S.C. § 1915(e)(1).
18 Whether to appoint counsel is within the discretion of the district court and requires a showing of
19 exceptional circumstances. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th
20 Cir. 2004). To determine whether exceptional circumstances exist, courts consider the likelihood
21 that the plaintiff will succeed on the merits as well as the plaintiff's ability to articulate his claims
22 "in light of the complexity of the legal issues involved." *Id.* Neither factor is dispositive, and
23 both must be viewed together. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

24 The Court denies Plaintiff's motion for appointment of counsel without prejudice. While
25 Plaintiff's case has passed screening, it has not progressed any further. So it is unclear if it will
26 succeed on the merits. Additionally, other than the return of Plaintiff's mail, Plaintiff has
27 demonstrated an ability to articulate his motions and claims.
28

II. Motion requesting case status.

In his motion—which appears to have some copying issues and is difficult to decipher—Plaintiff requests an update on the status of this case. He requests a copy of his complaint and “instructions of what must be done.” Although the Court ordinarily cannot provide free copies even to indigent plaintiffs proceeding *in forma pauperis*, when screening complaints, the Court routinely provides *pro se* prisoner plaintiffs with a courtesy copy of their complaints. See *Jackson v. Philson*, No. 3:20-cv-00009-GMN-CLB, 2020 WL 9888358, at *1 (D. Nev. Sept. 28, 2020). Because of the issues with Plaintiff’s address, it appears he may not have received this copy. So, the Court will send Plaintiff a copy of his complaint as a one-time courtesy.

Additionally, the Court cannot provide plaintiff with legal advice. See *Jacobsen v. Filler*, 790 F.2d 1362, 1365-66 (9th Cir. 1986) (explaining that providing legal advice to a *pro se* litigant “would entail the district court’s becoming a player in the adversary process rather than remaining its referee.”). So, the Court cannot give him broad “instructions of what must be done” other than what it provides in this order. The Court will, however, send Plaintiff a copy of the docket sheet and of the Court’s Rule 4(m) notice so that he may review the case and determine what next steps he will take.

III. Plaintiff’s mail.

On February 27, 2025, the Court issued a notice of intent to dismiss under Federal Rule of Civil Procedure 4(m) for Plaintiff’s lack of service on Defendant Serenity Healthcare Inc. (ECF No. 18). When that notice was returned as undeliverable, the Court issued an order for Plaintiff to update his address on or before April 14, 2025. (ECF No. 21). That order was also returned as undeliverable. (ECF No. 22). However, Plaintiff has now filed multiple documents using the same address. Plaintiff is incarcerated at the Nye County Detention Center. The address he lists for that facility is different than the address listed on that facility’s website. So, the Court will once again order Plaintiff to update his address as required by Nevada Local Rule IA 3-1, but will send this order to both the address Plaintiff provides and the one on the Nye County Detention Center website. The Court will further send a copy to the Tonopah location of the Nye County Detention Center.

